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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Training and Information Services, Inc.

File: B-225418

Date: March 9, 1987

DIGEST

Protest is sustained where the procuring agency awarded a contract on the basis of initial proposals, but there was a reasonable chance that by conducting discussions the agency would find a proposal offering a lower overall cost to the government to be more advantageous under the evaluation factors listed in the solicitation.

DECISION

Training and Information Services, Inc., protests the award of a contract to Safety Systems Incorporated for an "Intense Hazardous Materials Training Course" under request for proposals (RFP) No. M00264-86-R-0022, issued by the United States Marine Corps Development and Education Command. Training argues that the Marine Corps improperly awarded to Safety Systems on the basis of initial offers.

We sustain this protest because contrary to statute the Marine Corps accepted an initial proposal which did not offer the lowest overall cost to the government when there was a reasonable chance that by conducting discussions another proposal would be found more advantageous to the United States under the evaluation factors listed in the RFP.

The RFP called for firm-fixed price proposals to provide a training course in hazardous substance management and emergency response and provided that award would be made to the responsible offeror whose offer was most advantageous to the government based on the stated evaluation criteria. Under the RFP, offerors were required to submit both technical and cost proposals. Technical capabilities were to be evaluated on the following two criteria in descending order of importance: understanding the specific program requirements including evaluation for course content, method of presentation and schedule; and demonstrated ability, experience and

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prior performance of the offeror in performing similar services. Offerors also were required to submit a firm-fixed price proposal with a detailed cost breakdown. The RFP further stated that the evaluation and selection process would combine technical proposal and cost proposal ratings, and that the technical rating would be given a weight slightly more than the rating given the cost proposal. Finally, the RFP stated that the government might award a contract on the basis of initial offers received, without discussions, and that each initial offer should contain the offeror's best terms.

The Marine Corps received five proposals, the technical portions of which were evaluated and scored by a three-person panel. The panel assigned the following raw technical scores to the proposals:

Safety Systems	93.55
Training & Information Services	74.70
Darrell Bevis Assoc.	73.45
Phoenix Safety Assoc.	66.90
Hazards, Inc.	54.80

The panel found that all proposals were technically acceptable, and that no clarifications or discussions were needed to understand the proposals. A contract specialist evaluated the cost proposals. The lowest three fixed-price offers were Hazards at \$18,357.73; the protester at \$18,462; and Safety Systems at \$26,366.

A combined technical/cost score was determined as follows: the raw technical scores were weighted by dividing each individual score by the high score and multiplying the quotient by 60. The cost proposals were weighted by dividing the lowest proposed price by each offeror's proposed price and multiplying the quotient by 40. Thus, the technical scores were weighted at 60 percent and cost proposals 40 percent consistent with the RFP statement that technical factors would be weighted slightly more than cost. As calculated by the evaluation panel, the combined cost plus technical weighted scores for Safety Systems and the protester were 87.8 and 87.4, respectively. Following its debriefing, Training complained that the Marine Corps' calculation of its score was in error in that in calculating its weighted cost score, the evaluation panel expressed the quotient of the low offeror's price divided by the protester's price only to 2 decimal points, not 3 as was done for all the other offerors. Our calculations show that if this were done, the protester's weighted cost score would increase from 39.6 to 39.76 ($18,357.73 \div 18,462 = .994 \times 40 = 39.76$), which when rounded upward under the panel's

guidelines, would become 39.8. This increase of two-tenths of a point would result in a total combined weighted score for the protester of 87.6, only two-tenths of a point below the awardee, not four-tenths as the panel stated.

The Marine Corps advises that although the difference between Safety Systems' and the protester's combined scores was slight, the difference in technical scores of the two offerors was substantial. The agency further advises that Safety Systems' price was considered fair and reasonable based on adequate competition since there were two other acceptable offers which were lower in cost and two acceptable offers which were higher in cost. The Marine Corps awarded the contract on the basis of initial offers to Safety Systems on September 29, and the contract was completed in November. On October 3, the protester asked for a debriefing which was conducted on October 9; the firm's protest was filed with our Office on October 21.

The protester asserts that because of the closeness of the combined point scores and the protester's significantly lower price, the Marine Corps should have conducted discussions, rather than awarding on the basis of initial proposals. The protester also objects to its raw technical score, asserting that there was not a sufficient difference between the two companies' staffs to justify a spread of almost 19 points. Also, the protester argues that in drafting its offer, it was misled by the word "intense" in the course title, which indicated to it that the agency wanted a more advanced course emphasizing "hands on" training and not simply classroom experience. Training asserts that based on the debriefing, it now appears the Marine Corps wanted a less advanced course for its personnel with more classroom and less practical training. The protester states that, in any event, this issue could have been resolved by discussions and would have resulted in a lowering of its costs since classroom work is less expensive than practical training. Further, Training suggests that since at the debriefing the technical evaluation panel members acknowledged that they had previously attended courses offered by Safety Systems and not by Training, that there may have been the potential for an "unconscious" bias in favor of Safety Systems by the panel.

The Marine Corps asserts that award of the contract on the basis of initial proposals was proper because the solicitation advised offerors of this possibility, and because there had been adequate competition to demonstrate that award would result in a fair and reasonable price. That exception to the general requirement for discussions in a negotiated procurement no longer applies, however. Rather, under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985), a contracting agency may make an

award on the basis of initial proposals, where the solicitation advises offerors of that possibility, only if the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. See Consolidated Bell, Inc., B-220425, Mar. 11, 1986, 86-1 C.P.D. ¶ 238; Boston Intertech Group, Ltd., B-220045, Dec. 13, 1985, 85-2 C.P.D. ¶ 657.

In a recent, factually similar case concerning a procurement by the Veterans Administration, we stated:

"The Competition in Contracting Act of 1984 (CICA) requires that in negotiated procurements, agencies must conduct discussions with all responsible offerors who submit proposals within the competitive range except 'when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the Government.' 41 U.S.C. § 253b(d)(1)(B) (Supp. III 1985). Offerors in the competitive range are those whose proposals have a reasonable chance of being selected for award. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609 (1986). In our view, this provision of CICA prohibits agencies from accepting an initial proposal that is not the lowest considering only cost and cost-related factors listed in the RFP, where there is a reasonable chance that by conducting discussions, another proposal would be found more advantageous to the United States under the evaluation factors listed in the solicitation."

Hall-Kimbrell Environmental Services, Inc., B-224521, Feb. 19, 1987, 66 Comp. Gen. ____, 87-1 C.P.D. ¶ ____.

Here, the record indicates that the agency's own pre-established evaluation plan, whose purpose was to project the best value to the government, showed an almost insignificant point difference between the offerors. Furthermore, although the Marine Corps points to the difference in raw technical scores as a basis for awarding to Safety Systems, Training's offer was considered technically acceptable and, as noted above, the standard for award is lowest overall cost to the government. Clearly, award to Safety Systems was not at the lowest overall cost to the government. In fact, the protester and Hazards, which also submitted an acceptable proposal, both offered prices which were substantially lower than Safety Systems'. Under these circumstances, we conclude

that award to Safety Systems based on initial offers was improper and the Marine Corps should have conducted discussions.

With regard to discussions, the agency asserts that it had no questions about the offerors' technical approaches or prices and thus discussions were not required. This position has no merit. Neither CICA nor the Federal Acquisition Regulation recognizes any such exception to the general requirement that discussions be conducted. In this regard, we note that the record shows that the protester was downgraded for emphasizing practical instruction because it believed the use of the term "intense" in describing the training course indicated the agency's desire for more practical training. The Marine Corps also concluded that Training's proposed instructors were weak in experience in teaching their expertise. In our view, both of these alleged "weaknesses" in Training's proposal were areas which could appropriately have been the subject of discussions, as a result of which its technical score could have improved significantly.

We cannot recommend that the Marine Corps conduct discussions and request best and final offers because the awarded contract has been fully performed. As no other corrective action is appropriate, we find that the protester is entitled to the costs of preparing its proposal, Nicolet Biomedical Instruments, 65 Comp. Gen. 145 (1985), 85-2 C.P.D. ¶ 700, and of filing and pursuing its protest. 4 C.F.R. § 21.6(e). Accordingly, by separate letter, we are advising the Commandant of the Marine Corps of our determination. Training should submit its claims for these costs directly to the agency. 4 C.F.R. § 21.6(f).

The protest is sustained.

Wilton J. Doster
for Comptroller General
of the United States